

TOD WORKSHOP

The Redevelopment Process | March 28, 2005

Prepared for Alameda County Congestion Management Agency | www.accma.ca.gov

This handout is intended to provide a guideline for understanding the redevelopment process and identifying the issues at your particular site or sites.

Transit-oriented Development (TOD) Sites Are Complex Redevelopment Projects.

What makes TOD projects unique or challenging?

- Uncertain cleanup costs and the future or current environmental liabilities (Brownfields)
- Packaging the land for reuse Acquisition or title issues
- The sheer number of specialists (real estate dept., financial consultants, attorneys, environmental consultants, contractors, leasees, etc.)
- The sheer number of stakeholders Community involvement
- Time to prepare strategy and round up the participants/specialists

Assess The Project

The project starts by understanding and assessing the Value of the project. Achieving the property's **highest and best** use will provide the most successful strategy – unless that strategy is financially or otherwise infeasible. Consider the potential deal killers, such as community opposition or overly costly reconstruction/access, and adjust the vision or reposition the project.

$$\text{Value} = \text{Clean Market Value} - \text{Costs} + \text{Government Incentives}$$

Costs include:

- Purchase Price
- Transaction Costs
- Environmental Liabilities
- Other Liabilities (tax, legal, financial, physical)
- Repositioning Costs (rezoning and incentives)
- Cost of Capital

◇ Brownfields Sites are environmentally impaired property(ies) that are currently underutilized and are targeted for redevelopment, usually for investor profit and/or community improvement.

What Affects Value?

- Location (transportation & access)
- Demographics (population density & diversity – buying power)
- Highest and Best Use (functionality)
- Market Conditions
- Liabilities (tax, legal, financial, physical, environmental)

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Success Depends On The Creation Of A Team Environment.

How is this achieved?

By aligning the interests of ALL stakeholders on a jointly agreed upon Development Plan.

- Identify key stakeholder perspectives
- Focus all stakeholders on a common vision
- Work as a team

◇ Create a Public-private Partnership comprised of a diverse and talented team of professionals in real estate, finance, taxes, environmental assessment, NEPA/CEQA, traffic, engineering, etc.

How do we work together to make a redevelopment project happen?

- Create a team environment – Public-Private Partnership◇ includes ALL stakeholders
- Consistently communicate a vision
- Create a Development Plan consistent with market demands and community needs
- Jointly structure financing and secure incentives
- Create a procedure to work through difficult issues

What are the steps to redevelopment?

The redevelopment process may not be sequential...some activities are conducted in parallel.◇

- Identify Site or Group of Sites
- Gain Property Control (Enter into an arrangement of intent with the property owner, agencies, and the community)
- Conduct Due Diligence (Identify and assess risks, prepare risk management plan)
- Develop Exit Strategy/Development Plan
- Structure Financing
- Secure Entitlements & Permits
- Implement Risk Management Plan
- Close/Transfer Property
- Implement Development Plan
- Implement Exit Strategy

◇ Assess the status of your TOD site(s). For projects involving various parcels, each may be at a different stage or have differing issues.

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What is an Exit Strategy?

The Exit Strategy is the Implementation Plan – Plan the development and operations phases and what the finished product will look like.

- Consider adapting the existing structures as part of the overall redevelopment plan – “adaptive reuse”. This reduces the cost of redevelopment by modifying existing structures.♦
- Consider subdivision, sale of parcels, lease agreement and other mechanisms to finalize ownership/operating agreement.
- Improve the balance sheet; reduce the cost of the property by attracting government incentives in the form of exemptions, grants, or low-interest loans.

Exit Strategy: Think with the end in mind.

What Are The Tools?

These are tools to assess the overall strategy and value of the project:

- Brownfield Programs and Incentives (environmental liability relief, technical assistance, and financial incentives)
- Due Diligence (tax, legal, physical, environmental)
- Environmental Insurance (Used for large or multi-site projects)
- Contracts (Secures work to be conducted with known terms and conditions – controls risk)
- Technology (e.g., Prefab buildings, building reuse, engineering controls, and cost-effective remediation strategies)
- Capital (e.g., USEPA funding programs which can be used to leverage other state and local funds)

♦ Adaptive Reuse is a creative way of reusing existing buildings for other purposes (e.g., warehouse turned live/work space, or former PG&E station turned wine shop).

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Buyer's **Due Diligence** includes a variety of issues that are evaluated prior to closing the transaction, including:

- Transportation (access and traffic studies)
- Taxes
- Utilities
- Permits
- Zoning
- Political considerations
- Community support
- Marketability
- Feasibility of development (What are the sticky points? Rezoning? Reuse of existing structures?)

Seller's Due Diligence issues are much simpler:

- Can the buyer close?
- Can the buyer remove the environmental liability for the seller?

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- Environmental (Phase I/II, EIA, compliance, regulatory approval, brownfield incentives)
- Improvements (Code issues, repairs, functionality for highest and best use)
- Financing (pro forma, appraisal)
- Risk Management Plan (insurance)
- Exit Strategy

◇ Phase I ESAs can be expanded to compile property information including environmental, engineering, compliance, transportation, and access.

Due Dilligence as a Tool...

How to conduct cost-effective environmental due diligence for complex multi-parcel, multi-location projects, like TOD projects?

Environmental Due Diligence can be conducted for grouped parcels and for transit corridors. Phase I Environmental Site Assessments (ESAs)◇ provide screening and detailed information.

- Identify Site or Group of Sites
- Compile Property Data by TOD project (matrix format)
- Prepare radius and corridor maps (VISTA, EDR)
- Prioritize site by potential environmental conditions and other factors
- Conduct Site Visits and Interviews
- Conduct Detailed Records Review (where indicated)◇
- Prepare Draft Phase I ESA
- Review Phase I ESA Results with Team
- Incorporate Results into Risk Management Plan

◇ Detailed records reviews and potentially Phase II investigations can be used to estimate potential remediation costs.

When is a Phase II investigation necessary?

Whether to conduct Phase II depends on the property conditions (based on the Phase I ESA). When to conduct a Phase II generally depends on the terms and conditions of the Purchase Sale Agreement (PSA).

What are the governmental requirements for site closure?

A Phase II may reveal contamination that requires remediation. Sites may require only a short-term remedy such as excavation of shallow soil contamination to capping to remove exposure pathways to long-term remediation, such as an soil vapor extraction system.

Consider the level of risk that is acceptable to the project, quantify those risks and associated liabilities and allocate them through contract mechanisms.

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Environmental agencies may have cleanup programs such as DTSC's voluntary cleanup program to provide technical assistance to reach closure at a site. Closure letters are provided by the lead environmental agency and are often required by banks in order to secure loans.

Other considerations may arise during implementation of CEQA including traffic, biological, or compliance.

Risk-based approaches are used for cleanup soil and groundwater contamination, rezoning, grading and excavation, importing of fill material during redevelopment, and closure activities.

Other Tools...

- Government Brownfield Programs
- Technology
- Environmental Insurance
- Contracts
- Capital

Government Brownfield Programs provide:

- Environmental Liability Relief
- Technical Assistance
- Financial Incentives

USEPA provides brownfield assessment and cleanup grants. In addition, USEPA provides financial and technical assistance for job training, revolving loan funds, targeted assistance programs, and environmental justice grants.

CalEPA and the Regional Water Quality Control Board (RWQCB) also provide **technical assistance** for cleanup and closure of sites.

CalEPA

- Voluntary Cleanup Program
- Expedited Remedial Action Program

RWQCB

- Spills, Leaks, Investigations, and Cleanup (SLIC)
- Program, Underground Storage Tank (UST)
- Program and Aboveground Tank Program (AGT)

Consider **Environmental Insurance** to cover large-scale cleanups:

- Cost Cap Insurance (CCC)
- Pollution Legal Liability (PLL)
- Guaranteed Fixed Price Remediation

A great resource for finding resources is www.lgean.org/html/whatsnew.cfm

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Other agencies provide assistance:

- HUD
- Department of Commerce
- Army Corps
- US Small Business Association
- US Department of Transportation
- US Department of Agriculture

Another Tool: Technology makes for more cost-effective and speedy remediation. Techniques for better, faster, cheaper:

- Investigation
- Remediation & Cleanup
- Monitoring
- Institutional Controls

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CCC covers remediation overruns:

- When actual remediation is greater than originally estimated
- Offsite contamination at adjacent properties
- Unknown contamination discovered during remediation
- Increased costs due to regulatory changes during remediation

Use of Environmental Insurance provides coverage for unknowns and for remediation cost overruns.

PLL covers unknown pre-existing contamination and new events:

- Cleanup costs: on- and off-site, pre-existing, unknown, new
- Tort actions such as bodily injury and property damage
- Other liabilities such as business interruptions

Third party (environmental construction contractors) package properties and provide fixed price remediation:

- Guaranteed fixed price
- Environmental insurance available for package properties and large-scale remediation

Contracts are legally binding, court enforceable documents used to memorialize the Intent, Terms & Conditions (Ts&Cs), distribute risk and liabilities, and apportion liability protection.

What are some of the types of contracts?

- Purchase Sale Agreement (PSA)*
- Construction Contract
- Remediation Contract
- Financing
- Access Agreements
- Deed Restrictions

The terms of the PSA includes:

- Price
- Inspection Period
- Down payment
- Due diligence period
- Schedule of closing and cleanup
- Closing

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Capital provides a vehicle in the PSA and other contract negotiations.

Capital is a...

Vehicle for solving problems:

- Reduction in purchase price
- Debits or credits to PSA

Vehicle for adding value:

- Entitlements
- Repositioning property